



A motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure, requires the court to construe the complaint in the light most favorable to the plaintiff, accept all the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Meador v. Cabinet for Human Resources*, 902 F.2d 474, 475 (6<sup>th</sup> Cir.) *cert. denied*, 498 U.S. 867 (1990). The court may not grant such a motion to dismiss based upon a disbelief of a complaint's factual allegations. *Lawler v. Marshall*, 898 F.2d 1196, 1198 (6<sup>th</sup> Cir. 1990); *Miller v. Currie*, 50 F.3d 373, 377 (6<sup>th</sup> Cir. 1995) (noting that courts should not weigh evidence or evaluate the credibility of witnesses). The court must liberally construe the complaint in favor of the party opposing the motion. *Id.* However, the complaint must articulate more than a bare assertion of legal conclusions. *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434 (6<sup>th</sup> Cir. 1988). "[The] complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Id.* (citations omitted).

Along with his response in opposition to defendants' motion to dismiss, plaintiff filed an amended complaint in which he states that he was arrested by officers of the Knox County Sheriff's Office on August 8, 2003, for criminal intoxication and criminal simulation. Plaintiff remained in the custody in of Knox County until he was released on September 10, 2003. Plaintiff alleges that during the time he was incarcerated in Knox County, he received numerous beatings from Knox County officers, specifically, Officers Sands, Hill and John Doe ((Hill's partner), causing serious injuries. Plaintiff alleges that defendants Knox County and Sheriff Hutchison are liable for the actions of these officers

under the doctrine of *respondeat superior*. Plaintiff further alleges that his injuries resulted from the failure of Knox County and Sheriff Hutchison to properly train Knox County officers in the proper use of force against inmates.

Construing the complaint in a light most favorable to plaintiff and accepting all the complaint's allegations as true, plaintiff has stated a claim for excessive use of force, as well as a claim for failure to properly train its officers, against Knox County. These claims are more properly addressed on a motion for summary judgment after the parties have had an opportunity to conduct discovery. Accordingly, defendants' motion to dismiss as to Knox County will be denied. However, the court will dismiss the Knox County Sheriff's Office as a defendant, since the sheriff's office is not an entity which may be sued. See *Matthews v. Jones*, 35 F.3d 1046 (6<sup>th</sup> Cir. 1994).

Additionally, the court will dismiss Sheriff Hutchison, individually and in his official capacity, as a defendant. First, a suit against Sheriff Hutchison in his official capacity is the equivalent of a suit against the governmental entity. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 68 (1989). Knox County is the proper party to address the allegations of plaintiff's complaint.

Second, as to Sheriff's Hutchison's individual liability, the Sixth Circuit has held that § 1983 liability must be based on more than *respondeat superior*, or the right to control employees. See *Hays v. Jefferson County, Ky.*, 668 F.2d 874 (6<sup>th</sup> Cir. 1982). Thus, the failure of a supervisory official to supervise, control, or train the offending individual

officers is not actionable absent a showing that the official either encouraged the specific incident of misconduct or in some way directly participated in it. At a minimum, a plaintiff must show that the official at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers. *Hays v. Jefferson County, Ky.*, 668 F.2d 869, 874 (6<sup>th</sup> Cir. 1982); *Ketron v. Chattanooga-Hamilton Co. Hospital Auth.*, 919 F.Supp. 280, 284-85 (E.D.Tenn. 1996). As plaintiff's complaint fails to state that Sheriff Hutchison directly participated in his arrest and alleged assault, or that Sheriff Hutchison directly encouraged the use of excessive force on plaintiff, the amended complaint fails to state a claim upon which relief can be granted against Sheriff Hutchison, individually.

### **Conclusion**

For the reasons stated above, defendants' to dismiss the complaint herein [Doc. 10] is **GRANTED IN PART AND DENIED IN PART**. Defendants' motion is **DENIED** as to Knox County; and defendants' motion is **GRANTED** as to Sheriff Timothy Hutchison and the Knox County Sheriff's Office. Sheriff Hutchison and the Knox County Sheriff's Office are hereby **DISMISSED** as defendants in this action.

**IT IS SO ORDERED.**

**ENTER:**

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s/ Thomas W. Phillips  
United States District Judge